

Internal Revenue Service

Number: **200719002**

Release Date: 5/11/2007

Index Number: 2056A.03-01, 9100.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-114712-06

Date: JANUARY 25, 2007

Legend

Trust	=
Decedent	=
Spouse	=
Brother	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
<u>a</u>	=
Attorney 1	=
Attorney 2	=
Attorney 3	=
Law Firm 1	=
Law Firm 2	=

Dear :

This is in response to your February 22, 2006 letter in which you requested, on behalf of Trust, an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to file the notice provided under section 20.2056A-10(a)(2) of the Estate Tax Regulations, that the beneficiary of Trust has become a United States citizen.

The facts and representations submitted are summarized as follows:

Decedent died on Date 1, survived by his spouse, Spouse. At the time of Decedent's death, Spouse was a non-citizen permanent resident of the United States. A Qualified Domestic Trust (QDOT) under section 2056A of the Internal Revenue Code was established under the terms of Decedent's will.

Decedent's brother, Brother, served in the capacity of executor of Decedent's estate and as U.S. Trustee of the QDOT. Brother hired Law Firm 1 to prepare and file Decedent's estate tax return. Attorney 1 and Attorney 2 worked for Law Firm 1. Attorney 1 filed the estate tax return on Date 2 and filed a supplemental estate tax return on Date 5.

Spouse became a U.S. citizen on Date 3. On Date 4, Spouse informed Attorney 2 that she became a U.S. citizen. The attorneys for the estate inadvertently failed to file the required notice on Form 706-QDT (U.S. Estate Tax Return for Qualified Domestic Trusts) or an extension for filing such a notice on or before Date 6.

During a, Brother retained new counsel, Attorney 3 of Law Firm 2. It is represented that no distributions from the estate have been made to Spouse or to the QDOT. The QDOT remains unfunded.

Shortly after retaining Attorney 3, Brother expressed his desire to Attorney 3 to transfer the estate assets to the QDOT and to conclude the administration of the estate. While researching the legal issue involved, Attorney 3 discovered that the notice and certification of Spouse becoming a U.S. citizen were supposed to be filed by Date 6.

It is represented that Spouse has continuously resided in the United States from the date of Decedent's death and at all times thereafter and remains a resident of the United States.

You have requested a ruling that Brother, serving in his capacity as U.S. Trustee, be granted an extension of time to file the required notice and certification with the Internal Revenue Service that Spouse has become a United States citizen.

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2056(a) provides that, for purposes of the tax imposed by section 2001, the value of the taxable estate is to be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes or has passed from the decedent to the surviving spouse.

Section 2056(d)(1) provides that, except as provided in paragraph (2), if the surviving spouse is not a citizen of the United States, no deduction shall be allowed

under section 2056(a). Paragraph (2) provides that paragraph (1) shall not apply to any property passing to the surviving spouse in a QDOT.

There are three main requirements in order for a trust to be a QDOT under section 2056A. The trust instrument must require that at least one trustee of the trust be an individual citizen of the United States or a domestic corporation and that no distribution (other than a distribution of income) may be made from the trust unless a trustee who is an individual citizen of the United States or a domestic corporation has the right to withhold from the distribution the tax imposed by section 2056A on the distribution. In addition, the trust must meet the requirements of regulations that are prescribed to ensure the collection of any federal estate tax imposed either with respect to the trust property in the case of any distributions of trust principal during the life of the surviving spouse (other than distributions on account of hardship) or upon the property remaining in the trust at the time of the surviving spouse's death. Finally, the executor must make an election that applies to the trust on the federal estate tax return to qualify the property for the federal estate tax marital deduction.

Section 2056A(b)(1) provides that an estate tax is imposed on -- (A) any distribution before the date of death of the surviving spouse from a qualified domestic trust, and (B) the value of the property remaining in a qualified domestic trust on the date of the death of the surviving spouse.

Section 2056A(b)(12) provides that if the surviving spouse of the decedent becomes a citizen of the United States and if such spouse was a resident of the United States at all times after the date of the death of the decedent and before such spouse becomes a citizen of the United States, the tax imposed by section 2056A(b)(1)(A) shall not apply to any distributions after such spouse becomes a citizen and the tax imposed by section 2056A(b)(1)(B) shall not apply.

Section 20.2056A-10(a)(1) and (2) provide, in part, that a QDOT is no longer subject to the section 2056A tax if the surviving spouse becomes a citizen of the United States and the spouse was a resident of the United States at all times after the death of the decedent and before becoming a United States citizen, and the U.S. Trustee of the QDOT notifies the Internal Revenue Service and certifies in writing that the surviving spouse has become a United States citizen. Notice is to be made by filing a final Form 706-QDT on or before April 15th of the calendar year following the year that the surviving spouse becomes a United States citizen, unless an extension of time for filing is granted under section 6081.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in sections 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six

months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except in subtitles E, G, H, and I.

Section 301.9100-3 sets forth the standards that the Commissioner uses to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation and not expressly provided by statute. These standards indicate that the Commissioner should grant relief when the taxpayer provides evidence proving to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or to advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of section 301.9100-3 have been satisfied. Therefore, Brother, serving in his capacity as U.S. Trustee, is granted an extension of time of 60 days from the date of this letter to file the required notice and certification with the Internal Revenue Service that Spouse has become a United States citizen.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures

Copy for section 6110 purposes